Appendix A

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 6873.

BOSTON & PROVIDENCE RAILROAD STOCKHOLDERS' DEVELOPMENT GROUP,
Appellant,

v.

CHARLES W. BARTLETT, TRUSTEE, ET AL.,
Appellees.

[In the Matter of Boston and Providence Railroad Corporation of Boston.]

MEMORANDUM and ORDER

MARCH 29, 1967

PER CURIAM. The court has considered appellant's motion for reconsideration, appellees' second motion to dismiss, and appellant's memorandum in opposition thereto. In the last mentioned, appellant's counsel states that he was "led to believe" certain things. Careful inquiry of our clerk's office discloses that he was not led to believe any of the stated matters by that office. He was not led to believe them by the court. We cannot understand how, when appellant by order of court was denied a motion for ex-

tension for a month, he should have assumed that a motion to extend for a week would be granted simply by asking for it, let alone that he could ask for it the last day, too late for him to do anything if we denied it. Nor do we understand how he could think, having filed a designation of what he proposed to print, that he could, on said last day, expect that he could be allowed not to print various designated matters, or even furnish copies to the court or counsel.

Finally, we do not understand how counsel thought by asking this further extension, and shortening appellees' time, that he was not, as he puts it, "cramping appellees," particularly having in mind counsel's own characterization that "This is no ordinary appeal." We also note that the printer has informed us this morning that the record cannot be printed even on the date to which extension is now asked. Had counsel diligently conferred with appellees and made arrangements with them, or, had he conferred with our clerk and learned our customary procedure for ordering temporary copies to appellees so that they would not be cramped, we might be more receptive to his present assertion of concern.

Counsel had been fully warned by appellees' prior motion to dismiss that in their view time was of great importance in this case. Our own action had indicated that we agreed. The order of the District Court approving the Plan of Reorganization was entered on November 21, 1966. Appellant's subsequent motion was denied on December 7, 1966. We do not think that the fact that appellant chooses to employ counsel "without an office staff," or, apparently, other associates to whom he entrusts any work, should entitle him to set his own time schedule, break his own express commitment as to printing, and limit his consideration of our rules and procedure to making inquiry, it would seem, of his printer, and expect us to reverse our stand that in a case of this importance appellees, too, were entitled to

consideration. We decline to reverse our action on the motion to extend time, and we allow appellees' second motion.

Order. The appeal is dismissed for want of diligent prosecution.

By the Court:

(s) ROGER A. STINCHFIELD
Clerk.

Enter:

(s) ALDRICH, CHJ.

[cc: Messrs. Rood, Hollander, Meserve, Garfield, Channing and Mulcahy.]

Appendix B

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 6873.

BOSTON & PROVIDENCE RAILROAD STOCKHOLDERS DEVELOPMENT GROUP,
Appellant,

v.

CHARLES W. BARTLETT, TRUSTEE, ET AL.,
Appellees.

[In the Matter of Boston and Providence Railroad Corporation of Boston.]

MEMORANDUM and ORDER

APRIL 18, 1967

PER CURIAM. In connection with petitioner's request for rehearing reference is first made to our memorandum and order of March 29, 1967, much of the contents of which remains pertinent to, and is incorporated in, this memorandum. The relevant portions of petitioner's request may be summarized as follows:

1. Petitioner charges the court with not considering the merits. This, of course, is true. The reason the case was dismissed was because petitioner had not exercised reasonable diligence in presenting the merits.

2. Petitioner says that it is unfair to penalize it for the dereliction of its counsel. Our answer to this is that if someone must suffer because of dereliction of counsel it is more appropriate that it be his own client than the other side. This seems particularly so when it appears that the other side was vigorously objecting to postponement[1] and counsel for petitioner was using the delay, and perhaps capitalizing on it, to seek a settlement.

3. With respect to petitioner's asserted realization that he could not expect an extension which would postpone the time for argument, we must repeat that this was the necessary effect of what he did ask. Amplifying what we said before, had he made specific inquiry of the clerk,s office he would have been told that an appellee's brief is due under the rules the Friday, plus a week, before the opening of the sitting. This is to permit time for a reply brief, so that request for permission to file such a brief after the argument will be avoided. Hence the extension which petitioner requested would not have allowed the "one month" that it continues to talk about, but the rule's absolute minimum of three weeks. We have read the tendered galley of the brief which petitioner now wishes to file. It is incomprehensible that petitioner could have thought it fair, or even possible, that some 60 pages of assertion of broad and extensive mistakes of conduct, discretion, and [page two of original memo] law, could have been answered in three weeks.[2] Furthermore, we note that petitioner makes no reply to the statement in our previous memorandum that petitioner's printer informed us it could

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[1] It should not be forgotten that appellees had moved to dismiss once before, and we had supported petitioner. (March 2, 1967).

[2] Petitioner's proposed brief complains of a large number of alleged improprieties commencing in 1936 and continuing almost uninterruptedly for thirty years. What date is selected for the commencement of its legal complaints is not clear.

not possibly meet even the new date to which extension was sought.

In a reorganization proceeding, where pressing and important matters are involved, as appellees had fully brought to petitioner's attention, for an order of confirmation entered in November not to be reached until June is extraordinarily undesirable. For the reasons presently and hitherto given, we will not allow it.

Order. The petition is denied.

By the Court:

(s) Roger A. Stinchfield
Clerk.

Enter:

(s) Aldrich, Ch. J.

[cc. Messrs. Rood, Hollander, Meserve, Garfield, Channing and Mulcahy.]